

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.381 of 2002

- =====
1. Jawahir Bind
 2. Mithaku Bind, sons of Chulhai Bind.
 3. Hira Bind son of Bishwanath Bind.
 4. Kanahaya Bind son of Badri Bind.
 5. Basdeo Bind son of Kishore Bind.
 6. Badri Bind son of Samadhan Bind.
 7. Sheo Nath Bind son of Ramanandan Bind @ Bhaglu Bind.
 8. Bansropan Bind son of Ramnandan Bind.
 9. Manan Bind son of Dukhi Bind.
 10. Ghura Bind son of Brajraj Bind.
 11. Sheo Murat Bind, son of Bagadah Bind.
 12. Mathura Bind son of Bagadan Bind.
 13. Sheojee Bind @ Sheo Bind &
 14. Sant Bind are sons of Kuber Bind and all are residents of Village-Saraiya
PS.Chainpur, Distt-Kaimur, Bhabhua

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Rajesh Kumar, Amicus Curiae

For the Respondent/s : Mr. Sujit Kumar Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 22-01-2015

Appellant Jawahir Bind has been found guilty for an offence punishable under Section 325 IPC and directed to undergo RI for two years, also fined of Rs. 500/- in default thereof, to undergo RI for three months. He has further been sentenced to undergo RI for six months under Section 147 IPC and also directed the sentences to run concurrently. Appellants, Mithaku Bind, Hira Bind and Kanahaya Bind have been found guilty for an offence punishable under Section 323 IPC and each one has been directed to undergo RI for one year as well as under Section 147 IPC whereunder each of them has been directed to undergo RI for six months with a direction to run the



sentences concurrently. Sheo Nath Bind, Bansropan Bind have been found guilty for an offence punishable under Section 148 IPC and each of them has been directed to undergo RI for one year while the remaining appellants, namely, Basdeo Bind, Badri Bind, Manan Bind, Ghura Bind, Sheo Murat Bind, Mathura Bind, Sheojee Bind @ Sheo Bind, Sant Bind have been found guilty for an offence punishable under Sections 323/149 IPC and each of them has been directed to undergo RI for one year vide judgment of conviction and sentence dated 10.05.2002 passed by Additional Court No.1, Fast Track Court, Kaimur at Bhabhua in Sessions Trial No. 91/93/142/2001.

2. During pendency of this appeal, one of the appellants, Badari Bind died and on account thereof, instant appeal has been found abated against him vide order dated 18.06.2014.

3. Ramjee Singh (PW 6), while was lying at the Darwaza of accused Kuber Bind in an injured condition had given his Fard-e-beyan before the police who arrived at that place on rumour on 24.03.1992 at about 8:45 a.m., alleging *inter alia* that on the same day at about 6:30 a.m. his labourers were engaged in harvesting linseed crop. After some time, he along with his son, Shrawan Kumar Singh (PW 5) carrying his licensee gun came at the plot. No sooner than, their arrival, the accused persons (so named) armed variously came, encircled both of them. During aforesaid event, his son Shrawan Kumar Singh managed to escape while Hira Bind and Kanahaya Bind



gave Lathi blow over his left hand near his elbow, on account of which, his licensee gun with cartridges gone out of hold and fell in the field which was lifted by Mithaku Bind. Then thereafter, the accused persons tied his hand. Seeing this activity of the accused persons, his labourers escaped. Subsequently thereof, all the accused persons dragged him to Darwaza of Kuber Bind where, they began to assault with fists and slaps. He begged for mercy but they did not pay heed to his request. During midst thereof, Sheo Bind son of Kuber Bind lit fire in his own hut and put three hens and one she-goat kid on account of which, they also burnt. Some of them alarmed to the effect that Police arrived. Some of them said that he be murdered and in the aforesaid background, Mithaku Bind as well as Jawahir Bind brought hammer and a piece of stone and out of them, Mithaku gave blow on his chest with hammer. Subsequently thereof, after keeping stone beneath his left leg, Jawahir gave hammer blow causing injury thereupon. During midst thereof, police arrived and rescued him.

4. On the basis of aforesaid Fard-e-beyan, Chainpur PS Case No. 19/92 was registered followed with investigation as well as submission of charge-sheet leading to trial and after conclusion of which, the appellants/accused faced the ultimate result, the subject matter of instant appeal.

5. The defence case, as is evident from the mode of cross-examination as well as from the statement recorded under Section 313



Cr.P.C. is that of complete denial of occurrence. It has also been brought on record through the prosecution witnesses itself that some of the appellants were engaged as labourers under the prosecution party. A few days earlier to the alleged occurrence, there was dispute in between Shrawan Kumar Singh (PW 5) and Hira Bind wherein Hira Bind had assaulted Shrawan as well as having pendency of Title Suit No. 139/67, an admitted one, while the other Title Suit No. 2163/70, shown ignorance, the prosecution party raided house of accused persons, committed different kinds of offences, however, taking the police in their collusion, got this case filed. However, neither any DW nor any document has been brought up on record by way of defence.

6. In order to substantiate its case, the prosecution had examined altogether 9 PWs out of whom PW-1 is Banarsi Yadav, PW-2 is Tej Bali Singh, PW-3 is Dr. Naushad Ali, PW-4 is Kamlakant Singh, PW-5 is Shrawan Kumar Singh, PW-6 is Ramjee Singh PW-7 is Kamta Prasad Singh, PW-8 Dr. Birendra Kumar Singh, PW-9 is Rama Kant Tiwary, as well as had also exhibited Ext-1 Injury Report, Ext-2, Fard-e-beyan, Ext-3, Formal FIR, Ext-4, X-ray Report, Ext-5, Station diary entry, Ext-6, forwarding report as well as had also exhibited material Ext-I, II, respective X-ray plates. Nothing has been exhibited on behalf of defence nor there happens to be examination of any of the DWs.



7. Manifold arguments have been advanced by the learned Amicus Curiae while assailing the judgment of conviction and sentence. It has been submitted that on perusal of the prosecution case itself, it is apparent that story so propounded by the prosecution is nothing but a concocted version. To support the same, it has been submitted that when there was no dispute with regard to the land over which harvesting was going on, then in that event, what was the occasion for the informant and his son to carry gun with cartridges. Carrying gun is indicative of the fact that prosecution parties were aggressors which found further support on admission by PW-5 at para-7, regarding subsisting dispute, It has further been submitted that from the evidence under para-8 of PW-5, it is apparent that harvesting was going on, since before, from the aforesaid land without any hitch and hindrance, then in that event, arriving at the field carrying gun and cartridges speaks some thing else, more particularly, when there happens to be absence at the end of prosecution that an earlier occasion also they had gone over the field with gun and cartridges.

8. It has further been submitted that informant had concealed the factum of presence of Title Suit amongst the parties since before the occurrence, that means to say, the persisting land dispute. On account thereof, the prosecution was under obligation to prove their physical possession over the land exclusively with cogent



and reliable evidence. It has further been submitted that from the evidence of informant himself it is apparent that none of the accused persons were carrying an intention to kill and so the appellants should not have been convicted as indicated above. Furthermore, the assault by means of hammer as well as keeping stone beneath his leg and further assaulting with hammer over his leg is not at all found corroborated with the objective finding of the Investigating Officer on account of absence of those weapons at the place of occurrence. Then it has been submitted that from the evidence of PW-7, Kamta Pd. Singh, the Investigating Officer, it is evident that he had issued injury report relating to informant conspicuously had not exhibited the aforesaid injury report to suggest presence of injuries over the person of informant.

9. Furthermore, right from the Fard-e-beyan, there happens to be specific disclosure that Sheo Bind had torched his own hut and put three hens as well as one she-goat kid, however, from the evidence PW-8, it is apparent that he had not found those things and on account thereof, collusiveness of the investigating authority is itself apparent, on the other hand wanted to explain their own misdeeds.

10. As none of the witnesses have stated that they have followed the informant (PW 6) to the Darwaza of Kuber Bind and on account thereof, claiming themselves to be eyewitnesses to occurrence

is nothing but on account of interestedness. Contrary to that, even admitting their presence will suggest quite otherwise than in a manner advanced on behalf of prosecution, considering plea of defence to be aggressor.

11. It has further been submitted that what was the occasion for the Investigating Officer to differ from the factual things which have already been disclosed by the informant himself in the Fard-e-beyan as well as deposed by the witnesses, more particularly, PWs-5 and 6 during course of their evidence which could have, in the aforesaid event, as well as in the background of appreciating the status of the prosecution party to be aggressor as PW-5, had admitted, his confrontation with Hira Bind, few days ago wherein he was assaulted by the aforesaid Hira Bind and the appellants, the poor labourers having no courage to resist, became victims of atrocities on that score at the end of party taking the police in their collusion. Apart from this, it could be accepted to have exercised their right of private defence when the prosecution party duly armed with gun and other lethal weapons raided the house of Kuber Bind and set ablazed the hut. Hence, it has been submitted that the judgment of conviction and sentence recorded by the learned trial court is fit to set aside.

12. On the other hand, learned APP while sticking with the finding recorded by the learned trial court has submitted that from the judgment impugned, it is evident that the learned trial court had taken

note of while appreciating and analyzing the evidence and that happens to be the reason behind, that appellants have been found guilty for the lesser offence than whereunder charged. Hence, the judgment of conviction and sentence recorded by the learned trial court does not attract interference.

13. Before coming to the evidence on record, it is apparent from the Fard-e-beyan itself that Sheo Bind had lit fire in his own hut and then put three hens and a she-goat kid which also got burnt. PW-6, informant during course of his examination-in-chief and his son, PW 5 happen to be consistent on that very score. From the evidence of PW-7, the Investigating Officer, it is apparent that he had arrived at the Darwaza of Kuber Bind on getting rumour regarding the occurrence, found PW-6 Ramjee, informant lying in an injured condition but from the place of occurrence as he deposed, it is apparent that he had not taken note of the aforesaid theme. That means to say, the Investigating Officer had intentionally left which had categorically been stated by the prosecution itself so that defence could not have a say, if any with regard to assault of Ramjee Singh, though, at the Darwaza of Kuber Bind wherefrom he had seized a gun and cartridges belonging to the informant. Having such lapse at the part of the I.O. put question mark over authenticity of the investigation in the background of the fact that as per evidence of PW-5, para-8, the process of harvesting over the land was going on

for the last two days without any disturbance while PW-6, informant had stated that harvesting had commenced on the same day and those things are found duly controverted by the I.O. who had not found the crops even for a single inch having been harvested. In the aforesaid background, the manner as well as genesis of occurrence have become doubtful.

14. While going through the judgment impugned, it is apparent that learned trial court had not taken into account the aforesaid deficiencies as well as the disclosure having been made by PW-5 under para-7 which could have identified the prosecution to be aggressor in a way to take revenge and on account thereof, their presence at the Darwaza of Kuber Bind was only for the purpose of retaliation and in the aforesaid facts and circumstances of the case as well as taking into account the nature of injuries, even if admitting the prosecution case, does not suggest that they have crossed the scale so propounded while exercising the right of private defence.

15. Now coming to the theme of sustenance of injury by PW-6, it is apparent from the judgment impugned that learned trial court had tried to explain the event by referring the evidence of PW-3 as well as taking into account of probability. However, during course thereof, failed to appreciate the evidence of Investigating Officer which could have also impact upon the aforesaid issue.

16. PW-7 under para-2 of his examination-in-chief had

stated that he had recorded further statement of informant, prepared injury report and then referred the informant for medical examination. PW-3 during course of his evidence had not deposed that he had examined the informant on the police requisition. The doctor had further admitted that he had examined the patient on 24.03.1992 and had issued the injury report on 04.04.1992.

17. These things would not have played a vital role in deciding the case but taking into account the conduct of the prosecution as well as perceiving collusive investigation, these minor issues which have been overlooked, got importance and requires due consideration during dispensation of justice. In likewise manner, PW-8, proprietor of X-ray Clinic who claimed to have X-rayed the informant and found fracture got no relevance in the background of the fact that there happens to be no connectivity in between.

18. Now coming to the evidence of other PWs, the learned trial court had taken into account the status of PW-2, Taj Bali Singh, an Advocate Clerk, who subsequently claimed to have been hired by the informant as a labourer and had put question mark over his conduct. So far the evidence of remaining PWs 1 and 4 are concerned they have not claimed to have followed the informant up to the Darwaza of Kuber Bind, nor they have been able to disclose the distance in between Darwaza of Kuber Bind and plot where harvesting was going on as claimed by the prosecution.

19. Thus, after having critical analytical approach of the event visualizing from the record itself as well as taking into account the infirmities persisting on the record, it looks difficult to concur with the finding recorded by the learned trial court. Consequent thereupon, the judgment of conviction and sentence rendered by learned trial court is set aside. The appeal is allowed.

20. Since the appellants are on bail, they are discharged from the liability of bail bonds.

21. The first and last pages of the instant judgment be handed over to the Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J)

Patna High Court
January 22nd 2015
Perwez/AFR

U		T	
---	--	---	--